



Order 98-10-30

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Served: October 28, 1998

Issued by the Department of Transportation
on the 28th day of October, 1998

Application of

HAITI NATIONAL AIRLINES

Docket OST-95-758

for an exemption under 49 U.S.C. § 40109

ORDER

Summary

In this order we are renewing the exemption authority of Haiti National Airlines (HNA) to conduct scheduled foreign air transportation of persons, property and mail between Port-au-Prince, Haiti, and the terminal points Miami and Fort Lauderdale, Florida; New York, New York; and San Juan, Puerto Rico; and authority to perform charters subject to Part 212 of our rules.¹

Application

By application filed September 3, 1998, HNA seeks to renew its exemption authority to engage in scheduled foreign air transportation of persons, property and mail between Port-au-Prince, Haiti, and the terminal points Miami and Fort Lauderdale, Florida; New York, New York; and San Juan, Puerto Rico; and authority to perform charters subject to Part 212 of our rules.

¹ HNA has held Department authority to conduct similar services since 1987. See Order 88-4-59. Most recently, on September 25, 1997, we renewed the authority of Haiti National Airlines for a period of one year to conduct the services described above, subject to the condition that HNA conduct the authorized services only by wet leasing aircraft from a duly authorized and properly supervised U.S. or foreign air carrier. Haiti is currently a Category 3 country under the FAA's International Aviation Safety Assessment Program (IASA).

In support of its request, HNA states that while it has not conducted any services between Haiti and the United States since its authority was last renewed, it anticipates that it will soon resume scheduled combination services.

Responsive Pleadings

On September 15, 1998, Amerijet International, Inc. filed an answer opposing renewal of HNA's authority.² Amerijet states that for several years it has held authority from the Department and the Government of Haiti to conduct scheduled all-cargo services between the two countries. Amerijet states that since instituting service in the market, it has unsuccessfully sought Haitian Government authority to offer an "unlimited number of frequencies and to serve a large number of intermediate points" as part of its U.S.-Haiti all-cargo services.³ Amerijet argues that the Government of Haiti has limited it to one daily frequency and has limited the intermediate points it is authorized to serve to three.

On September 18, 1998, HNA filed a reply. HNA states that it is a private company and has no ability to influence the policies of the Government of Haiti. As such, HNA states that denial of its request, while Amerijet continues its daily frequency in the market, would be unfair. HNA further states that with the exception of one Haitian cargo carrier, which is subject to the same wet lease condition as that imposed on HNA, virtually all of the services in the U.S.-Haiti market are being provided by U.S. carriers. HNA states that to its knowledge, not a single Haitian combination carrier is holding out Haiti-U.S. passenger services.

On October 1, 1998, Amerijet filed an additional responsive pleading.⁴ Amerijet reiterates its concerns raised in its answer and responds to HNA's reply. Amerijet argues that renewal of HNA's authority must be based on an affirmative finding of reciprocity, a finding which Amerijet argues cannot be made based on the record here. Amerijet states that the assertion that HNA lacks influence with its government; that U.S. carriers dominate the U.S.-Haiti market; and that HNA's U.S. services must be performed by wet lease, have no bearing on the issue of Haitian reciprocity.

No additional pleadings were filed in response to HNA's request.

² In its answer, Amerijet incorporated by reference a letter it submitted to the Department dated September 14, 1998, in which Amerijet sought the Department's assistance in connection with difficulties Amerijet reported it was experiencing with the Government of Haiti.

³ See answer of Amerijet, Docket OST-95-758.

⁴ Amerijet's pleading was accompanied by a motion to file an otherwise unauthorized document. We will grant the motion.

Decision

We have decided to renew the exemption authority of Haiti National Airlines to conduct scheduled foreign air transportation of persons, property and mail between Port-au-Prince, Haiti, and the terminal points Miami and Fort Lauderdale, Florida; New York, New York; and San Juan, Puerto Rico; and authority to perform charters subject to Part 212 of our rules. We are renewing HNA's authority for one year from the service date of this order, and are reimposing the wet lease condition we impose on carriers from Category 3 countries. We find that renewal of the requested authority, as conditioned, is consistent with the public interest.

Because there is no bilateral aviation agreement in place between the United States and Haiti, air service between the two countries is based on comity and reciprocity. We believe, taking into account the U.S. and Haitian carrier services in the market, that the requisite degree of reciprocity exists to support renewal of HNA's long-standing authority.

This is not to say that we are unmindful of Amerijet's concerns. However, while Amerijet has referred generically to its attempts to obtain broad, open authority from Haiti, it has not cited the precise details of any specific instance where it has applied for, and where the Haitian Government has denied, an Amerijet request to operate additional services. That being the case, we cannot conclude that Amerijet's assertions of inadequate reciprocity rise to a demonstrable level warranting withholding renewal of HNA's request. Having said that, we are fully prepared to assist Amerijet in the future should it be unable to obtain Haitian approval of a specific service it wishes to operate in the U.S.-Haiti market. In the meantime, though, we do not believe in the circumstances presented that withholding renewal of existing authority from HNA would serve to advance the public interest.⁵

Based on the foregoing, we find that our action is consistent with the public interest, and that the exemption granted HNA does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

⁵ We also find that HNA remains operationally and financially qualified to conduct its proposed services.

1. We grant Haiti National Airlines an exemption from § 41301 of Title 49 of the U.S. Code to permit it to engage in scheduled foreign air transportation of persons, property and mail between Port-au-Prince, Haiti, and the terminal points Miami and Fort Lauderdale, Florida; New York, New York; and San Juan, Puerto Rico; and authority to perform charters subject to Part 212 of our rules;
2. The authority granted above shall be effective for one year from the service date of this order;
3. The authority granted above is limited to operations conducted under wet-lease arrangement with a duly authorized and properly supervised U.S. or foreign air carrier;⁶
4. We grant the motion of Amerijet International to file an otherwise unauthorized document;
5. To the extent not granted, we deny any additional requests for relief in Docket OST-95-758;
6. We may amend, modify or revoke this authority at any time and without hearing; and
7. We will serve a copy of this order on Haiti National Airlines; Amerijet International, Inc.; the Embassy of Haiti in Washington, D.C.; the Department of

State (Office of Aviation) and the Federal Aviation Administration (Miami-IFO).

By:

⁶ Haiti National Airlines may not conduct U.S. operations with its own aircraft and crews without further order of the Department.

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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